

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Lauren Kerstein	Team: Squad #7	CCRB Case #: 201405657	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 05/06/2014 6:18 PM, Saturday, 06/07/2014	Location of Incident: 2273 Morris Avenue; Field Place and Creston Avenue; 46th Precinct stationhouse;	Precinct: 46	18 Mo. SOL 11/6/2015	EO SOL 11/6/2015	
Date/Time CV Reported Thu, 07/24/2014 2:01 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 07/24/2014 2:01 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Merlin Alston	00023	939865	046 PCT
2. LT Seth Lynch	00000	932932	PBBX

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Brendan Murphy	13053	955237	PBBX
2. POM Daniel Kern	9634	954999	PBBX
3. POF Andrea Ojobi	1908	955271	PBBX
4. POF Nadine Nazario	16704	955252	PBBX
5. POM Marco Morrone	10632	955223	PBBX

Officer(s)	Allegation	Investigator Recommendation
A.LT Seth Lynch	Abuse: On May 6, 2014 and June 7, 2014 Lt. Seth Lynch authorized the strip search of § 87(2)(b) inside the 46th Precinct stationhouse.	
B.POM Merlin Alston	Force: On June 7, 2014, PO Merlin Alston used physical force against § 87(2)(b) at the intersection of Field Place and Creston Avenue in the Bronx and the 46th Precinct stationhouse.	
C.POM Merlin Alston	Discourtesy: On June 7, 2014, PO Merlin Alston spoke discourteously to § 87(2)(b) and individuals at the intersection of Field Place and Creston Avenue in the Bronx.	
D.POM Merlin Alston	Off. Language: On June 7, 2014, PO Merlin Alston made remarks to § 87(2)(b) and individuals based upon race and sex at the intersection of Field Place and Creston Avenue in the Bronx and the 46th Precinct.	
E.POM Merlin Alston	Force: On June 7, 2014, PO Merlin Alston used pepper spray against § 87(2)(b) at the 46th Precinct stationhouse.	

### Case Summary

On May 6, 2014 at approximately 6:18 p.m., § 87(2)(b) allegedly engaged in a hand to hand drug transaction for a quantity of crack/cocaine which she then swallowed when the officers approached her in front of 2273 Morris Avenue in the Bronx (encl. E5-E7, blue folder). After being transported to the 46<sup>th</sup> Precinct, § 87(2)(b) alleged that she was strip-searched by an unidentified female officer before being transported to § 87(2)(b) (**Allegation A**). At § 87(2)(b), after being informed by an officer that § 87(2)(b) swallowed drugs, they tested her urine which came back positive for marijuana. § 87(2)(b) § 87(2)(b)'s aunt, alleged that PO Merlin Alston performed an anal cavity search in plain view of the street and recovered a bag of marijuana from § 87(2)(b)'s buttocks (encl. D30).

On June 7, 2014, at approximately 12:20 a.m. at the intersection of Field Place and Creston Avenue in the Bronx, officers observed § 87(2)(b) again in a hand to hand drug transaction for a quantity of crack/cocaine which she again swallowed after being arrested (encl. E10-E12, blue folder). § 87(2)(b) alleged that while she was being handcuffed by the officers, PO Alston pushed her face into the ground (**Allegation B**) and stated to the surrounding crowd of civilians, "Back the fuck up," and "If any of ya'll niggers or any of ya'll bitches record, I'll slap your fucking phone" (**Allegation C and D**).

While being transported to the 46<sup>th</sup> Precinct, § 87(2)(b) alleged that after she refused to provide information in regards to crimes that occurred in the neighborhood, PO Alston punched her in the face approximately ten times (**within Allegation B**) and called her a "gay bitch," "dyke bitch" and stated, "You think because you hang with all them niggers you're tough" (**within Allegation D**). § 87(2)(b) alleged that PO Alston then threw her out of the prisoner van (**within Allegation B**) and pepper sprayed her (**Allegation E**). At the 46<sup>th</sup> Precinct, § 87(2)(b) again alleged that she was strip-searched by PO Andrea Ojobi and PO Nadine Nazario before being transported to § 87(2)(b) (**within Allegation A**). At the hospital, her urine was again tested after medical staff were informed that she swallowed drugs and this time it tested positive for marijuana and cocaine. § 87(2)(b) stated that she witnessed § 87(2)(b)'s arrest during which she observed officers place § 87(2)(b) on the ground, but did not allege that they pushed her or used discourteous or offensive language (encl. D30).

§ 87(2)(g)

### Mediation, Civil and Criminal Histories

A Notice of Claim inquiry was filed on December 15, 2014, the results of which are still pending. This case was unsuitable for mediation. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### Civilian and Officer CCRB Histories

- This is the second complaint filed by § 87(2)(b) § 87(2)(b)

§ 87(2)(b)

(encl. A5).

- PO Alston, the subject of a majority of § 87(2)(b)'s allegations, has been a member of the service for nine years. He has since been suspended from the NYPD pending the outcome of a criminal trial which resulted from his arrest on December 4, 2014. According to a press release by the U.S. Drug Enforcement Agency (DEA), during the course of a joint investigation with IAB, PO Alston participated in drug transactions, served as the driver and offered protection to a drug trafficker and also tipped off other drug traffickers in regards to upcoming NYPD drug raids (encl. A6-A7).
- PO Alston has had nine previous CCRB complaints (encl. A1). § 87(2)(g)
  - In CCRB# § 87(2)(b) after observing him smoking a marijuana cigarette, PO Alston allegedly threw § 87(2)(b) against a parked car and punched him in the face twice. The force however, was exonerated after the investigation determined § 87(2)(b) resisted arrest and his arrest photo did not show any indication of physical injury.
  - § 87(2)(b), who did not file a CCRB complaint, § 87(2)(b), alleged § 87(2)(b), that after being arrested at Field Place and Creston Avenue (the same location of the June 7, 2014 incident), PO Alston broke his nose by punching him twice in the face (encl. A8-A9)
- Lt. Lynch has been a member of the service for eleven years and has had twelve complaints filed against him (seven of which are still pending investigation). Two allegations were substantiated § 87(2)(g) (encl. A3-A4).

#### Attempts to Contact Civilians

- § 87(2)(b) who reported this complaint, did not witness the incident and was therefore not interviewed in connection with this investigation.
- § 87(2)(b) missed two appointments on July 24, 2014 and August 25, 2014, and has not contacted the CCRB to re-schedule.
- § 87(2)(b) mentioned that her friend, § 87(2)(b) witnessed the May 6, 2014, incident but was unable to provide contact information for her. A Lexis Nexis search came back negative and a NYC Department of Correction inquiry determined that she was not incarcerated.

#### Findings and Recommendations

##### Allegations Not Pleaded

- § 87(2)(g)  
§ 87(2)(g)  
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§ 87(2)(g)
- § 87(2)(g)  
§ 87(2)(g)  
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### **Explanation of Officer Identification**

- § 87(2)(g)
- The investigation was unable to identify the female officer who allegedly performed the strip search on May 6, 2014, since there was no command log entry noting that an officer conducted one (encl. I6). Due to the large pool of potential subject officers, on July 24, 2014, § 87(2)(b) was shown photographs of various female officers who were listed as working during the time she was brought to the precinct. However, she did not recognize any of them as the officer who conducted the strip search (encl. D18-D29).
- § 87(2)(b) identified PO Alston as the subject officer of most of her allegations and she accurately described him (encl. D7).

### **Allegation A: Abuse of Authority- On May 6, 2014 and June 7, 2014, Lt. Seth Lynch authorized the strip search of § 87(2)(b) inside the 46<sup>th</sup> Precinct stationhouse.**

§ 87(2)(b) alleged that an unidentified female officer strip-searched her at the 46<sup>th</sup> Precinct on May 6, 2014, and that on June 7, 2014, PO Ojobi was one of two female officers who strip-searched her again at the 46<sup>th</sup> Precinct.

Lt. Lynch denied that § 87(2)(b) was strip-searched stating that once § 87(2)(b) swallowed the drugs it became a safety issue and she needed to be taken to the hospital immediately (encl. F31). PO Ojobi denied that she strip-searched § 87(2)(b) (encl. F41).

Both arrest reports note that a strip search was not conducted and the respective command log entries do not note that a strip search occurred (encl. I6 and I14).

§ 87(2)(g)

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### **Allegation B: Force- On June 7, 2014, PO Merlin Alston used physical force against § 87(2)(b) at the intersection of Field Place and Creston Avenue in the Bronx and at the 46<sup>th</sup> Precinct stationhouse.**

### **Allegation C: Discourtesy-On June 7, 2014, PO Merlin Alston spoke discourteously to § 87(2)(b) and individuals at the intersection of Field Place and Creston Avenue in the Bronx.**

### **Allegation D: Offensive Language-On June 7, 2014, PO Merlin Alston made remarks to § 87(2)(b) and individuals based upon race and sex at the intersection of Field Place and Creston Avenue in the Bronx and the 46<sup>th</sup> Precinct stationhouse.**

### **Allegation E: Force-On June 7, 2014, PO Merlin Alston pepper sprayed § 87(2)(b) at the 46<sup>th</sup> Precinct stationhouse.**

§ 87(2)(b) alleged that after handcuffing her, PO Alston pushed her face into the ground, punched her repeatedly in the face, pepper sprayed her and uttered various discourteous and offensive remarks to the individuals observing the arrest on the street and to her later inside the prisoner van outside the 46<sup>th</sup> Precinct. § 87(2)(b) mentioned that § 87(2)(b) was taken to the ground in order to be handcuffed but did not corroborate any of the discourteous statements or offensive remarks § 87(2)(b) alleged and would not have been present for the force allegations at the 46<sup>th</sup> Precinct. § 87(2)(b) did however observe and document with her camera the severe facial injuries § 87(2)(b) had at § 87(2)(b) (D10-D12).

None of the other officers who were present for § 87(2)(b)'s arrests on May 6, 2014, and June 7, 2014, could recall PO Alston's actions. Lt. Lynch, the only officer present for the first arrest could not recall any part of the incident. Despite being able to recall their actions and § 87(2)(b)'s actions during the June 7, 2014 incident, PO Marco Morrone and PO Brendan

Murphy, could not recall the whereabouts of PO Alston at any point during the incident (encl. F18-F19 and F25-F26). Furthermore, neither officer could account for how or when § 87(2)(b) sustained the severe facial injuries she is observed to have in her arrest photo and personal injury photos (encl. E2 and D10-D12). § 87(2)(g)

§ 87(2)(g)

Pod: \_\_\_\_7\_\_\_\_

Investigator:	_____ Signature	<u>Lauren Kerstein</u> Print	_____ Date
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Supervisor:	_____ Title/Signature	<u>Diana Murray</u> Print	_____ Date
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Reviewer:	_____ Title/Signature	_____ Print	_____ Date
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Reviewer:	_____ Title/Signature	_____ Print	_____ Date
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